U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 18 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on January 11, 2014. On September 8, 2014, the Administrative Appeals Office (AAO) rejected the appeal. On December 18, 2014, we requested an original, duly executed Form G-28 signed by the petitioner to overcome the rejection of the Form I-290B, Notice of Appeal or Motion, which the petitioner submitted. On February 2, 2015, we reopened the matter on our own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and provided the petitioner an opportunity to submit a brief within thirty days. The petitioner did not respond.

The petitioner is a professional health care provider. It seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. As required by statute, an uncertified Form ETA 9089, Application for Permanent Employment Certification (Form ETA 9089 or labor certification) accompanied the petition.

The director determined that the petitioner had failed to establish that the beneficiary possessed the educational credentials required to be eligible for the visa classification as a member of the professions holding an advanced degree. The director denied the petition accordingly.

I. Classification

The petition is for a Schedule A, Group I occupation. The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in Schedule A occupations. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089 from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

On appeal, the petitioner submitted a brief and additional evidence. For the reasons discussed below, upon review of the entire record, the petitioner has not established that the beneficiary is eligible for the classification sought or that the beneficiary meets the minimum job requirements listed on the ETA Form 9089.[1]

[1] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

II. Law

Section 203(b) of the Act states, in pertinent part, that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In addition, for the classification at issue, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). *See* 8 C.F.R. §§ 212.15(a)(1),(c). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify "[t]hat the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type" and "[t]hat the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States." The latter verification, however, is not binding on the Department of Homeland Security (DHS). *See* 8 C.F.R. § 212.15(f)(1)(iii).

III. Analysis

In the instant petition, the ETA Form 9089 states that the offered position has the following minimum requirements:

H.4. Education: Master's.
H.4B Major field of study: Physical Therapy.
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: No.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: No.
H.14. Specific skills or other requirements: Must have either U.S. State Physical Therapy license or be eligible to take the NPTE.

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a master's degree in Physical Therapy awarded in 2003 from [redacted] in the Philippines.

As noted above, the ETA Form 9089 requires that the beneficiary have a master's degree, not an alternate combination of education and experience described as a bachelor's and five years of progressive experience. Therefore, in order to be eligible for the requested classification as a member of the professions holding an advanced degree, the petitioner must establish that the beneficiary possesses a U.S. master's degree or a foreign equivalent degree established by an official academic record. The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position as of the priority date. 8 C.F.R. §§ 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the job offer portion of the ETA Form 9089 to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

The petition included a copy of the beneficiary's 2003 Bachelor of Science in Physical Therapy from [redacted] in the Philippines with transcripts and two documents dated October 18, 2011 titled "Report of Evaluation of Educational Credentials" (report) and "[redacted] Course Work Evaluation Checklist" (evaluation) from the [redacted]). According to the report, the beneficiary's degree program consisted of four years of "[c]lassroom time" and ten months of "[c]linical time" and [redacted] "is comparable to an accredited college or university in the U[nited] S[tates]." The admission requirement is listed as the equivalent of a diploma from a U.S. high school. The report also indicates that the beneficiary

attended the [redacted] in 2011. The report found that the beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the U[nited] S[tates]" and that "[t]he first professional degree in the U.S. is the [m]aster's degree or higher." The evaluation states that the "degree does satisfy the minimum number of 150 semester credits that is required for a U.S. [m]aster's degree." The evaluation does not, however, provide a basis for the statement that 150 semester credits is the minimum required for an advanced degree in physical therapy in the United States. Finally, the report indicates that one Filipino credit is equivalent to .75 of a U.S. credit and thus, the beneficiary's education is equivalent to a total of 203.25 U.S. credits.

According to a July 16, 2013 letter from [redacted] Managing Director of Credentialing Services at [redacted], "[redacted] role is to determine substantial equivalency to the minimum requirement for a U.S. entry-level master's degree" and that "[t]here is support from multiple sources for the conclusion that 150 credit hours is the appropriate measure for such a degree." Dr. [redacted] cites the U.S. Department of Education (DOE), Institute of Educational Sciences, Publication from the National Center for Education Statistics [NCES]: *Digest of Education Statistics 2006, Appendix B: Definitions* and *The American Physical Therapy Association ("APTA") Fact Sheet, 2009-10* as the bases for her conclusions.

Although Dr. [redacted] did not include copies of the above, we located both documents online. *The APTA Fact Sheet* states that the average physical therapist education program required 210.9 total semester credits in 2004-2005 and 228.1 total semester credits in 2009-2010, which far exceeds the 150 stated by Dr. [redacted] and is consistent with the information in the CAPTE publication the petitioner submitted, which states that the average physical therapist program required 230.6 semester credits in 2010-2011 and 232.2 semester credits in 2011-2012 and 2012-2013, but does not discuss whether 150 credit hours is the appropriate measure for a degree above a baccalaureate. According to the *Digest of Education Statistics,* a bachelor's degree "requir[es] at least 4 years (or equivalent) of full-time college-level study. This includes degrees granted in a cooperative or work-study program." Accordingly, a bachelor's degree may require more than four years, or 120 semester credits, and include "co-operative or work-study programs," such as the beneficiary's ten month clinical program.

The petitioner asserts on appeal that "CAPTE determined that U[.]S[.] [p]hysical [t]herapy programs have a minimum of 112 credit[s]." Given that this number is below the minimum 120 semester credits required for a bachelor's degree in the United States, it is unclear if the petitioner is asserting that the 112 semester credits are in addition to the 120 semester credits, for a total of 232 credits which is consistent with the previously discussed information provided in both the CAPTE publication and *The APTA Fact Sheet.* Regardless, the referenced CAPTE chart contains no explanation as to how the author reached this conclusion. The bottom of the range for pre-professional credits is listed as 60 and the bottom of the range for professional credits is listed as 90, but the bottom of the range for the total credits required is listed as 112, not 150 (60 pre-professional credits plus 90 professional credits.) A definition of the term pre-professional is also not included. Without additional information, we cannot determine the value of this chart.

In her July 2013 letter, Dr. [redacted] correctly states that "[t]here is no basis, however, for using an 'average' calculation to set the minimum threshold for educational equivalency" and that "[s]ome

recognized U.S. programs will fall above and below this 'average.'" According to the CAPTE and APTA information, however, the minimum of 150 credits used by is far below the "average" program length.

Dr. also relies on the Electronic Database for Global Education (EDGE) which "defines the undergraduate bachelor's degree as four years of study, or 120-140 semester credits...[and] a master's degree as 1-2 years in length," but does not state that 150 semester credits is the minimum required for a U.S. advanced degree in physical therapy. The fact that it is possible to receive a master's degree after a total of 150 semester credits does not mean that every degree requiring at least 150 credits is above a baccalaureate. The length of study is only one factor in an advanced degree determination. An individual could complete five or six years of a bachelor's level education and still not hold a master's degree. Further, the record does not contain any evidence that an individual can obtain an advanced degree in physical therapy from a U.S. university after four years of undergraduate study and one year of advanced study, or 150 semester credits.

As the petitioner's ETA Form 9089 shows that the minimum education required for the job is a U.S. master's degree in physical therapy or foreign educational equivalent, the petitioner must demonstrate that the beneficiary has a foreign educational equivalent to a U.S. master's degree in physical therapy, rather than sufficient total credits for a master's degree in another field.

According to Dr. :

> Each applicant is reviewed separately and all documentation from the post-secondary level [is] included in the review. Regardless of the individual's degree title, the curriculum followed by the individual to complete their degree, combined with additional coursework, may meet the minimum length of study and content requirements established by CAPTE for U.S. schools. Notably, in the case of the all applicants from this university who have requested a credentials evaluation from had completed additional post-graduate studies to supplement their initial degree, which contributed to the equivalency analysis.

The letter also states that analysis does not examine whether a particular degree or educational institution is equivalent – rather, separately evaluates the specific coursework of each individual applicant." In the instant petition, included the beneficiary's additional 2011 coursework. As looks at coursework and credentials beyond the beneficiary's degree, it does not evaluate whether the beneficiary's degree from the Philippines is a single foreign equivalent degree above that of a baccalaureate, the requirement for this classification, or a single foreign equivalent degree to a U.S. master's degree in physical therapy, the degree listed on the ETA Form 9089. *See Snapnames.com, Inc.*, 2006 WL 3491005 at *11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the Institute of Chartered Accountants of India, was not a single college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). Where the analysis of the beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather

than a "foreign equivalent degree."[2] The provided information makes it clear that does not look at the individual's degree, but rather at an individual's coursework (which may include coursework from multiple sources to determine "substantial equivalence," which is a different standard). As a result, the evaluation, while relevant to licensure requirements, is not a proper basis to determine whether the beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the requirement listed on the ETA Form 9089 or the foreign equivalent of an advanced degree as required by the classification.

The record also contains an evaluation from of the which also finds that the beneficiary's education is the equivalent of a master of physical therapy degree. concluded that the beneficiary received a total of 256 credits, in contrast to finding that the beneficiary received a total of 203.25 credits. The petitioner does not provide any additional information to explain the discrepancy in the total credits. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Further, the petitioner did not include copies of the materials the evaluator relied upon, except for information from EDGE. The information from EDGE will be discussed later in this decision. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Contrary to the petitioner's assertions, there is no evidence that state licensing requirements, FSBPT, or CAPTE require an individual to have a single degree that, in and of itself, is the foreign equivalent of a U.S. master's degree in physical therapy, rather than simply meeting a minimum number of credits which can be granted from a variety of sources. The regulation at 8 C.F.R. § 212.15(f)(i) authorizes to look at all of the individual's credentials in the aggregate when it is considering the individual's suitability for health care worker certification for admissibility purposes. The regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e) and does not extend to determining whether (1) the beneficiary's education satisfies the regulatory definition of "advanced degree" or (2) the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issues in the instant petition. Regardless, a credentialing organization's verification of the beneficiary's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii).

As stated by the petitioner, EDGE provides that a Bachelor of Arts/Sciences/Commerce, etc. from the Philippines "represents attainment of a level of education comparable to a bachelor's degree in the United States." According to the credential description on EDGE, the bachelor's degree is:

[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

> Four to five years beyond the high school diploma (except Law which is an advanced degree as in the USA) with four being the most common length (Architecture, Engineering, Physical Therapy and Occupational Therapy for example, are five).

EDGE recognizes that the Filipino bachelor's degree in physical therapy is a five-year program of study. According to the letter the petitioner submitted from Director, AACRAO International Education Services, the educational system in the Philippines uses the nomenclature used in the United States and is similar to the U.S. system. EDGE's determination is that the five year physical therapy degree program in the Philippines is equivalent to an undergraduate level education in the United States, not an advanced degree. The fact that the United States discontinued the baccalaureate level degree in physical therapy does not mean that a country that continues to offer a baccalaureate degree must have increased the level of that degree to above a baccalaureate. EDGE looks at the educational system of the country and the degree itself to make its determination, unlike , which bases its determination on credits for coursework.

The petitioner has not demonstrated that the information from EDGE is not applicable to the beneficiary's baccalaureate degree, especially since it addresses the five-year (including clinical training) bachelor's degree in physical therapy offered in the Philippines or that the beneficiary's program is different from the other five year physical therapy programs EDGE references.

On appeal, the petitioner asserts that the EDGE/AACRAO finding "is factually inaccurate since there is no U[.]S[.] bachelor's degree to which the Philippine degree can be equivalent." EDGE, as stated above however, does not find that the Filipino degree in physical therapy is the equivalent of a U.S. bachelor's degree, which, as acknowledged by Director no longer exists, but rather that the physical therapy program in the Philippines is comparable to a bachelor's level education and "is fully comparable to the Bachelor of Science in Physical Therapy once awarded in the USA." Director letter also explains that "the master of science in physical therapy exists in the Philippines as a higher or advanced degree and it is THAT degree which would be comparable to the U[.]S[.] master's degree."

The record also contains two non-precedent AAO decisions. The regulation at 8 C.F.R. § 103.3(c) provides that only precedent decisions of USCIS are binding on all its employees in the administration of the Act. The Departments of Homeland Security and Justice must designate and publish precedent decisions in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Regardless, the two decisions involved a different occupation and the beneficiaries in those cases obtained their degrees in a different country from the beneficiary in the instant petition. In addition, the unpublished decisions did not involve conflicting information from EDGE or any other source. In both decisions, the information regarding the degree equivalency submitted was consistent with EDGE's findings. The petitioner, therefore, has not established that the two non-precedent decisions are relevant to the instant petition.

Dr. in her July 2013 letter, also references information in EDGE regarding the U.S. Doctor of Pharmacy degree, the master's degree in physical therapy from Poland and the "doctorate degree in physiotherapy" from "some countries in the former Soviet Union." Similar to the non-

precedent decisions above, this information is not relevant as the Doctor of Pharmacy is a U.S. degree in a different field and the other degrees are not from the Philippines.

While USCIS has considered the findings of and USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, however, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795.

The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). If the petitioner submits relevant and probative evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)). In the instant petition, the petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that (1) the beneficiary's degree is a foreign equivalent degree above that of a baccalaureate degree, as required by the classification and (2) the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089.

Based upon the above, the petitioner has not established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089 or that the beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, the petitioner has not established that the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

IV. Conclusion

The petitioner has not established that the beneficiary meets the minimum requirements of the job offered, as listed on the ETA Form 9089. In addition, the petitioner has not established that the beneficiary qualifies for immigrant classification as an advanced degree professional pursuant to section 203(b)(2) of the Act, and the implementing regulation at 8 C.F.R. § 204.5(k)(2). Accordingly, the petition may not be approved.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.